In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1775

ANTHONY SEYMOUR BRADFORD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that his conviction for obstructing correspondence in violation of 18 U.S.C. 1702 was based on an erroneous interpretation of that statute.

After a jury trial in the United States District Court for the Southern District of Indiana, petitioner was convicted on one count of an indictment charging him with obstructing correspondence, in violation of 18 U.S.C. 1702. He was sentenced pursuant to the Federal Youth Corrections Act, 18 U.S.C. 5010(b). The court of appeals affirmed (Pet. App.).

In October 1972, Mrs. Marian Woodward Hannon, petitioner's mother, ordered pre-printed checks from the Indiana National Bank, where she had a checking account. She requested that the checks be sent to her home in Indianapolis (Tr. 9-11).[1] The Bank relayed the order to

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[1]"Tr." refers to the transcript of the trial proceedings.

Deluxe Check Printers, which then mailed a package of personalized checks, with a non-personalized message enclosed, to Mrs. Hannon's home address (Tr. 23-25). On November 6, 1972, a postman gave the package of checks to petitioner at his mother's home (Tr. 33-34). Mrs. Hannon did not subsequently receive the package (Tr. 11). On November 28, 1972, responding to a radio message concerning an attempt to cash forged checks at a bank, police apprehended petitioner and found Mrs. Hannon's checks in his possession (Tr. 44-47). Later that day petitioner signed a written statement admitting that he had taken the checks (Tr. 49-51; Gov. Ex. 9).

Petitioner's contention that his conviction for obstructing correspondence in violation of 18 U.S.C. 1702[2] was based on an erroneous interpretation of that statute was fully discussed and correctly rejected by the court below, in an opinion on which we rely.

Petitioner interprets Section 1702's prohibition against obstructing "correspondence" to mean that it applies only to personal communication by letter, not packages that contain no personal correspondence; he contends, therefore, that he should have been charged with a violation of Section 1708,[3] which proscribes tampering with

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[2]18 U.S.C. 1702 provides in pertinent part:

> Whoever takes any letter, postal card, or *package* * * * from any letter or mail carrier * * * before it has been delivered to the person to whom it was directed, *with design to obstruct the correspondence* * * * shall be fined not more than $2,000 or imprisoned not more than five years, or both. [Emphasis supplied.]

[3]18 U.S.C. 1708 provides in pertinent part:

> Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, * * * or from a letter or mail carrier,

any mail matter, rather than Section 1702. Petitioner's narrow interpretation of Section 1702 is contrary to the plain language and established judicial construction of the statute. In rejecting petitioner's claim the court below observed (Pet. App. A-5):

> The statute refers to the taking of letters, postal cards, and packages, with no indication that the contents of such items are determinative of whether there is a violation. Given the careful distinctions drawn regarding the content of the mail in defining the different classes, 39 U.S.C. §4251 *et seq.*, if content were equally decisive for the purposes of §1702, we think Congress would have indicated this directly.

Section 1702 has been broadly interpreted by other courts to apply to any kind of mail. See *McCowan* v. *United States*, 376 F. 2d 122 (C.A. 9), certiorari denied, 389 U.S. 839; *Ross* v. *United States*, 374 F. 2d 97, 103 (C.A. 8), certiorari denied, 389 U.S. 882. It has been specifically applied to the taking of credit cards, *United States* v. *Marlow*, 423 F. 2d 1064 (C.A. 5), and government checks, *United States* v. *Owens*, 424 F. 2d 266 (C.A. 6), certiorari denied, 400 U.S. 844; *Ross* v. *United States*, *supra*. "In none of these cases," as the court below noted, "was there any indication that

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any letter, postal card, package, bag, or *mail*, or abstracts or removes * * * any article * * * or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein * * *. [Emphasis supplied.]

It is, in any event, clear that a prosecution under Section 1702 is not improper simply because petitioner might have been prosecuted under Section 1708.

personal correspondence was enclosed with the check or credit card" (Pet. App. A-5).[4]

Petitioner's contention that a "pre-planned design" to block a particular communication must be shown to warrant conviction under 18 U.S.C. 1702 is without foundation. The mere intent to obstruct a communication is sufficient to convict under Section 1702. *Ross* v. *United States, supra.* Such an intent was reasonably inferred by the jury from the circumstances surrounding the delivery of the checks, the later discovery of the checks in petitioner's possession, and the written statement he gave to police officers on November 28, 1972.

It is therefore repectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1974.

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[4]Petitioner's reliance on *United States* v. *Grieco*, 25 F.R.D. 58, 59 (S.D. N.Y.), is misplaced. The court was not concerned there with whether the scope of Section 1702 extended beyond first-class mail, but with whether a design to obstruct correspondence in general is sufficient to support a conviction under Section 1702. The defendant therein contended that he could not have intended to obstruct correspondence since he believed that the addressee of the letter was fictitious.

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